

Office of the Secretary of the Treasury

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separate account established by an insurer at a financial institution eligible to receive payments through the ACH network. Such an account is limited to the purposes of:

- (i) Receiving payments of the Federal share of compensation;
- (ii) Disbursing payments to insureds and claimants; and
- (iii) Transferring payments to the insurer or affiliated insurers for insured losses reported on the bordereau as already paid.

(2) *Remittance of interest.* All interest earned on advance payments in the segregated account must be remitted at least quarterly to Treasury's Office of Financial Management or as otherwise prescribed in applicable procedures.

(e) *Denial or withholding of advance payment.* Treasury may deny or withhold advance payments of the Federal share of compensation to an insurer if Treasury determines that the insurer has not properly disbursed previous advances of the Federal share of compensation or otherwise has not complied with the requirements for advance payment as provided in this subpart.

(f) *Affiliated group.* In the case of an affiliated group of insurers, Treasury will make payment of the Federal share of compensation for the insured losses of the affiliated group to the insurer designated in the Initial Notice of Insured Loss to receive payment on behalf of the affiliated group. The designated insurer receiving payment from Treasury must distribute payment to affiliated insurers in a manner that ensures that each insurer in the affiliated group is compensated for its share of insured losses, taking into account a reasonable and fair allocation of the group deductible among affiliated insurers. Upon payment of the Federal share of compensation to the designated insurer, Treasury's payment obligation to the insurers in the affiliated group with respect to any insured losses covered on the applicable bordereau is discharged to the extent of the payment.

§ 50.55 Determination of Affiliations.

For the purposes of subpart F, an insurer's affiliates for any Program Year

shall be determined by the circumstances existing on the date of occurrence of the act of terrorism that is the first act of terrorism in a Program Year to be certified by the Secretary for that Program Year. Provided, however, if such act of terrorism occurs after March 31, 2006, the act of terrorism must also be a Program Trigger event to determine affiliations as provided in this section.

[71 FR 27572, May 11, 2006]

Subpart G—Audit and Investigative Procedures

§ 50.60 Audit authority.

The Secretary of the Treasury, or an authorized representative, shall have, upon reasonable notice, access to all books, documents, papers and records of an insurer that are pertinent to amounts paid to the insurer as the Federal share of compensation for insured losses, or pertinent to any Federal Terrorism Policy Surcharge that is imposed pursuant to subpart H of this part, for the purpose of investigation, confirmation, audit and examination.

[74 FR 66053, Dec. 14, 2009]

§ 50.61 Recordkeeping.

(a) Each insurer that seeks payment of a Federal share of compensation under subpart F of this part shall retain such records as are necessary to fully disclose all material matters pertinent to insured losses and the Federal share of compensation sought under the Program, including, but not limited to, records regarding premiums and insured losses for all commercial property and casualty insurance issued by the insurer and information relating to any adjustment in the amount of the Federal share of compensation payable. Insurers shall maintain detailed records for not less than five (5) years from the termination dates of all reinsurance agreements involving commercial property and casualty insurance subject to the Act. Records relating to premiums shall be retained and available for review for not less than three (3) years following the conclusion of the policy year. Records relating to underlying claims shall be retained for

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not less than five (5) years following the final adjustment of the claim.

(b) Each insurer that collects a Federal Terrorism Policy Surcharge as required by subpart H of this part shall retain records related to such Surcharge, including records of the property and casualty insurance premiums subject to the Surcharge, the amount of the Surcharge imposed on each policy, aggregate Federal Terrorism Policy Surcharges collected, and aggregate Federal Terrorism Policy Surcharges remitted to Treasury during each assessment period. Such records shall be retained and kept available for review for not less than three (3) years following the conclusion of the assessment period or settlement of accounts with Treasury, whichever is later.

[74 FR 66058, Dec. 14, 2009]

Subpart H—Recoupment and Surcharge Procedures

SOURCE: 74 FR 66059, Dec. 14, 2009, unless otherwise noted.

§ 50.70 Mandatory and discretionary recoupment.

(a) Pursuant to section 103 of the Act, the Secretary shall impose, and insurers shall collect, such Federal Terrorism Policy Surcharges as needed to recover 133 percent of the mandatory recoupment amount for any Program Year.

(b) In the Secretary's discretion, the Secretary may recover any portion of the aggregate Federal share of compensation that exceeds the mandatory recoupment amount through a Federal Terrorism Policy Surcharge based on the factors set forth in section 103(e)(7)(D) of the Act.

(c) If the Secretary is required to impose a Federal Terrorism Policy Surcharge as provided in paragraph (a) of this section, then the required amounts, based on the extent to which payments for the Federal share of compensation have been made by the collection deadlines in section 103(e)(7)(E) of the Act, shall be collected in accordance with such deadlines:

(1) For any act of terrorism that occurs on or before December 31, 2010, the

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Secretary shall collect all required amounts by September 30, 2012;

(2) For any act of terrorism that occurs between January 1 and December 31, 2011, the Secretary shall collect 35 percent of any required amounts by September 30, 2012, and the remainder by September 30, 2017; and

(3) For any act of terrorism that occurs on or after January 1, 2012, the Secretary shall collect all required amounts by September 30, 2017.

§ 50.71 Determination of recoupment amounts.

(a) If payments for the Federal share of compensation have been made for a Program Year, and Treasury determines that insured loss information is sufficiently developed and credible to serve as a basis for calculating recoupment amounts, Treasury will make an initial determination of any mandatory or discretionary recoupment amounts for that Program Year.

(b)(1) Within 90 days after certification of an act of terrorism, the Secretary shall publish in the FEDERAL REGISTER an estimate of aggregate insured losses which shall be used as the basis for initially determining whether mandatory recoupment will be required.

(2) If at any time Treasury projects that payments for the Federal share of compensation will be made for a Program Year, and that in order to meet the collection timing requirements of section 103(e)(7)(E) of the Act it is necessary to use an estimate of such payments as a basis for calculating recoupment amounts, Treasury will make an initial determination of any mandatory recoupment amounts for that Program Year.

(c) Following the initial determination of recoupment amounts for a Program Year, Treasury will recalculate any mandatory or discretionary recoupment amount as necessary and appropriate, and at least annually, until a final recoupment amount for the Program Year is determined. Treasury will compare any recalculated recoupment amount to be amounts already remitted and/or to be